

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3 JAMIN BAILON and ROMIE ADAMS,
4 as Personal Representative of
5 the WRONGFUL DEATH ESTATE OF
6 JOHN THADDEUS BAILON, and
7 Next Friend of A.B., a Minor Child,

8 Plaintiffs,

9 vs.

CV-20-00230 LF/CG

10 VALENCIA COUNTY BOARD OF
11 COUNTY COMMISSIONERS and JOSEPH
12 ROWLAND and JUAN RODRIGUEZ,
13 in both their individual and their
14 official capacities,

15 Defendants.

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TRANSCRIPT OF PROCEEDINGS
FAIRNESS HEARING (VIA ZOOM)
BEFORE THE HONORABLE LAURA FASHING
UNITED STATES MAGISTRATE JUDGE
WEDNESDAY, AUGUST 26, 2020, 2:00 P.M.
ALBUQUERQUE, NEW MEXICO

FOR THE PLAINTIFFS:

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--AND--

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BY: MR. STEVEN MARK CHAVEZ

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7
8 ALSO PRESENT: MS. ROMIE ADAMS, Personal Representative

9 Proceedings reported by machine shorthand, and
10 transcript produced by computer-aided transcription.

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1 FAIRNESS HEARING (VIA ZOOM)

2 (Court in session at 2:00 p.m.)

3 THE COURT: Good afternoon, everybody.

4 We are here this afternoon for a fairness
5 hearing in the case of -- it's J-A-M-I-N, Jamin. How do
6 you say that, Mr. Davis?

7 MR. PHILIP DAVIS: Jamin Bailon, Your Honor.

8 THE COURT: Jamin Bailon and Romie Adams, as
9 Personal Representative of the Wrongful Death Estate of
10 John Thaddeus Bailon, and Next Friend of A.B., a Minor
11 Child v. Valencia County Board of County Commissioners
12 and Joseph Rowland and Juan Rodriguez, in both their
13 individual and their official capacities.

14 May I have appearances, please?

15 MR. PHILIP DAVIS: Yes, Your Honor. Philip
16 Davis for the plaintiffs.

17 MR. STEVEN CHAVEZ: Steven Chavez, Your Honor,
18 for the plaintiffs.

19 MS. ROMIE ADAMS: Romie Adams, personal
20 representative.

21 MS. JONLYN MARTINEZ: Jonlyn Martinez on
22 behalf of the defendants, Your Honor.

23 THE COURT: Okay. And we are using a court
24 reporter. Let me ask, Ms. Goehl, if you can hear -- not
25 if you can hear, but do you need this recorded in

1 addition to your own procedure? Do you want me to
2 record it on Zoom?

3 THE COURT REPORTER: No, Your Honor.

4 THE COURT: Okay. She has indicated "No,"
5 although she was on mute. I think she indicated "No,"
6 so we will just go ahead with this hearing just using
7 the systems of the court reporter. She may be recording
8 it also for her own purposes.

9 All right. So it is a fairness hearing. At a
10 fairness hearing, the question, of course, is
11 essentially whether the proposed settlement is in the
12 best interests of the minor child, who in this case is
13 A.B.

14 My first question to the parties is whether we
15 need to seal any portion of this hearing? And let me
16 start with you, Mr. Davis. My intent is to continue to
17 refer to the child as "A.B." But, Mr. Davis, do you see
18 any reason to seal the hearing?

19 MR. PHILIP DAVIS: I don't, Your Honor. The
20 minor child is 17, she turns 18 in February, and I don't
21 see the need to seal it. And quite frankly, if you are
22 more comfortable using her initials, we can, but I'm not
23 opposed to using her name.

24 THE COURT: Okay. I suppose I prefer using
25 her initials because under our court filing rules, if

1 anything involves a minor, it needs to be -- for
2 example, if we had a transcript prepared of this at any
3 time, then we'd have to go through the transcript, and
4 any time we referred to her actual name, we'd have to
5 change it to "A.B." So I think it's just easier if we
6 refer to her by her initials.

7 MR. PHILIP DAVIS: That's fine, Your Honor.
8 We are happy to do that.

9 THE COURT: Okay. Ms. Martinez, do you agree
10 there's no reason to seal any portion of this hearing?

11 MS. JONLYN MARTINEZ: I do agree, Your Honor.

12 THE COURT: Okay. So then also, of course,
13 with respect to whether or not this proposed settlement
14 is in the best interests of the child, I need to
15 consider four different factors:

16 One. Whether the proposed settlement was
17 fairly and honestly negotiated.

18 Two. Whether serious questions of law and
19 fact exist placing the ultimate outcome of the
20 litigation in doubt.

21 Three. Whether the value of an immediate
22 recovery outweighs the mere possibility of future relief
23 after protracted and expensive litigation.

24 Four. Whether in the judgment of the parties,
25 that the settlement is fair and reasonable.

1 So I'm going to give everybody a chance to
2 weigh in on those issues. I think I will start with
3 you, Mr. Davis, or actually, Mr. Chavez. I don't know
4 who prefers to proceed. Whoever wants to speak for the
5 plaintiff, if you could first tell me the basic terms of
6 the settlement agreement, and then go on to address some
7 of those other issues; how it was negotiated; serious
8 questions of law and fact; value of an immediate
9 recovery over possibility of future relief; and whether,
10 in your view, the settlement is fair and reasonable.

11 So, again, whoever wishes to speak for the
12 plaintiffs, Mr. Davis or Mr. Chavez?

13 MR. PHILIP DAVIS: Yes, Your Honor. It's Phil
14 Davis, and I'll do that.

15 I believe that the proposed settlement is fair
16 and reasonable to the minor. I think it was fairly and
17 honestly negotiated. The case settled for \$125,000
18 inclusive of damages, fees, costs, applicable gross
19 receipts tax. This case was mediated several months
20 ago, and the defendants did not offer a lot of money.
21 The settlement mediation conference was actually
22 extremely short. I don't think it lasted an hour. I
23 thought that the most profound comment that we got from
24 the mediator in that was, "Well, you'll get to a jury;
25 and boy, are you in trouble once you get there."

1 And he was absolutely right; and, in fact, he
2 wasn't telling us anything that we didn't already know.
3 This is a wrongful death shooting case that started in
4 State Court under state law. We discovered it, and we
5 established in our own minds a good faith basis to amend
6 the complaint, bring a 1983 action upon which Ms.
7 Martinez promptly removed, which we expected her to do.
8 So we were faced, obviously, with qualified immunity in
9 regard to the use of deadly force under the Fourth
10 Amendment.

11 The other big picture issue for us -- well,
12 there were two, one on liability and one on damages.
13 Liability. The officers were deposed, and they told a
14 story that seemed coherent and seemed compelling and was
15 absolutely in contradiction to what our expert witnesses
16 told us the evidence established as a matter of
17 ballistics, blood spatter, and accident reconstruction,
18 which meant that we were faced with the prospect of
19 persuading a jury that the officers were lying about
20 what happened.

21 And we also were faced with the prospect of
22 having a jury believe a bunch of experts instead of real
23 honest to goodness walking, talking police officers.
24 And I've been around enough to know that was an uphill
25 battle from the start. Even if my experts spoke matters

1 that were truthful and compelling, the officers' story
2 just didn't square with it.

3 There was only one eyewitness to the shooting
4 other than the two officers who were present at the
5 scene and who fired their weapons at the decedent. That
6 eyewitness was a woman who was in the mobile home
7 adjacent to the yard where the decedent was in a car,
8 trying to flee, when he was shot to death by the
9 officers. The eyewitness initially told investigating
10 officers at the scene that she had seen nothing, and she
11 later confided to Mr. Chavez's investigator that she
12 told them that because, one, she distrusted police
13 officers; and two, that she was fearful of retaliation
14 if she told the officers a story that they did not want
15 to hear, which was that there was no reason for them to
16 have shot Mr. Bailon to death.

17 So here we are, faced with an investigation
18 that tells us that the eyewitness said, "I saw nothing,"
19 and then she tells us a story that actually corroborates
20 what our experts are telling us. Well, that sounds like
21 good news right up until the moment that Ms. Martinez
22 notifies us our eyewitness for deposition. And Ms.
23 Martinez is a skillful, experienced, relentless
24 examiner, and the upshot was that the eyewitness simply
25 lost it and exploded in a vulgar verbally abusive

1 torrent of epithets against Ms. Martinez, after which
2 she got up and walked out, which basically left us with
3 no eyewitness because it became impossible at that
4 point, in our judgment, to put her on the stand.

5 That was the problem with liability.

6 The comparative fault under state law was
7 obvious because of the story in regard to how this man
8 had endangered the officers' lives. And I don't need to
9 explain to you why qualified immunity is always a
10 problem in a deadly force case.

11 On damages in the case, in particular the
12 decedent had spent most of his life in prison; had no
13 earnings history; had no real particular connection to
14 his family, including his two children, and had limited
15 contact with them in the several months before he was
16 shot to death. And then Ms. Martinez unearthed from the
17 Department of Corrections a series of literally hundreds
18 of tape-recorded phone calls that the decedent had made
19 while he was incarcerated, and one was worse than the
20 next in terms of statements that the decedent made in
21 regard to his relationship with his children, among
22 other things, which essentially trashed our loss of
23 consortium claims and left us with a case that was
24 highly risky on liability and highly risky on damages.
25 Based on that, the defendants did not rely very much to

1 mediation.

2 Afterward, Ms. Martinez and I began a fairly
3 frank conversation about what it would take to get the
4 case settled. We made offers back and forth. Let me
5 qualify that. We made an offer, and it was rejected.
6 We made another offer, and it was rejected. And then we
7 made a third offer that Ms. Martinez persuaded the
8 Association of Counties to accept, and that was the 125.

9 So I think that the case was fairly and
10 honestly negotiated. I think that there are serious
11 questions of law and fact that left us with a case that
12 might have had a good result, but almost more certainly
13 would have had a bad result.

14 The value now versus the future relief, in
15 light of the difficulty of proving damages, is quite
16 frankly a no-brainer for us. And as a result, even
17 though the two children are not getting very much money
18 out of this settlement, it's fair and reasonable.

19 The costs for us were enormous. Mr. Chavez
20 and I booked over \$150,000 in attorneys' fees, and
21 together we are accepting fees out of the settlement of
22 about \$40,000, which is about 25 cents on the dollar,
23 based on our hourly rates.

24 What we did was, we took the \$125,000. There
25 was \$7500 in my trust account left over from an IPRA

1 case that we had prevailed on against the Department of
2 Public Safety, and we added those together to get
3 \$132,500. We subtracted \$50,000 for costs, and that did
4 not include about \$10,000 in costs that Mr. Chavez and I
5 wrote off.

6 So after \$50,000 in costs getting reimbursed,
7 that leaves \$82,500, and what we decided to do was
8 simply split it four ways: One quarter to Jamin Bailon;
9 one quarter to A.B.; and then a quarter each to Mr.
10 Chavez and me. So the number is approximately \$20,625
11 that each of us is getting out of the settlement.

12 Ms. Adams also agreed to reduce her personal
13 representative fees substantially in order to enable us
14 to get this case settled. I have worked with Ms. Adams
15 before in wrongful death cases as the personal
16 representative, and I know that the fee that she agreed
17 to take in this case is substantially less than what she
18 would have expected in the normal case.

19 So for all those reasons, I think that there
20 is clearly a record to satisfy the Court that it can
21 approve this settlement as being in the best interests
22 of the minor.

23 THE COURT: Okay. Thank you, Mr. Davis. I
24 have a couple of questions. With respect to the
25 qualified immunity defense, what was the allegation

1 there? Was it that the officers were in fear for their
2 lives when he started to flee in his automobile?

3 MR. PHILIP DAVIS: Yes. What the officers did
4 was, one of the officers testified -- the sergeant
5 testified that the car started to go backwards; that the
6 driver's door was open; that he was actually inside the
7 open driver's door; and as the car started to go
8 backwards, he feared that he would be pulled under the
9 car because he was caught in the door. Our ballistics
10 established that his story of being inside the door was
11 not right, but that was the allegation that was the
12 justifiable homicide defense, was fear for harm to
13 himself. And then the other officer testified that he
14 saw his sergeant was in danger and he fired shots in
15 order to protect the life of his sergeant.

16 THE COURT: Okay. And was it the other
17 officer who was the shooter, or did they both shoot?

18 MR. PHILIP DAVIS: They both shot.

19 THE COURT: Okay. And then just -- and this
20 may be a stupid question, so I'll just put it in that
21 category, but just for my own edification, I'm always a
22 little confused. Does there always seem to be a
23 personal representative in a wrongful death estate? And
24 is there a requirement that that be a particular -- I
25 mean, is there any qualification for that role?

1 MR. PHILIP DAVIS: The answer to your first
2 question is "Yes." State law requires a personal
3 representative be appointed in order to bring the cause
4 of action on behalf of the estate.

5 And the answer to your second question is that
6 the qualification is that the personal representative
7 agrees to accept the appointment and act consistent with
8 state law. And the role of the personal representative
9 under state law is essentially to ensure that the
10 settlement monies, if recovered, are properly
11 distributed among the beneficiaries of the estate.

12 THE COURT: Which may be different than, for
13 example, if the person had a will?

14 MR. PHILIP DAVIS: No, Your Honor. And I'm
15 treading lightly on areas that I'm not terribly familiar
16 with, and Mr. Chavez may be able to do a better job, but
17 the res that is the cause of action that belongs to the
18 estate of a decedent who alleges a wrongful death
19 doesn't pass through a will, and so the beneficiaries
20 are based on state law in regard to who the survivors
21 are of the decedent.

22 THE COURT: Yes, I suppose that's what I
23 meant, was that the beneficiaries are beneficiaries that
24 are identified just by law, and not necessarily
25 beneficiaries of somebody's estate if they have a will?

1 MR. PHILIP DAVIS: That is correct, Your
2 Honor.

3 THE COURT: Okay.

4 MR. STEVEN CHAVEZ: Fiduciary duties, Your
5 Honor, are basically the same in state law as in
6 wrongful death law.

7 THE COURT: Okay. And does the personal
8 representative owe a fiduciary duty towards the
9 beneficiaries at all?

10 MR. PHILIP DAVIS: Yes. The fiduciary duty is
11 to ensure that the beneficiaries properly receive the
12 distributions to which they are entitled from the estate
13 of the decedent in the wrongful death action.

14 THE COURT: Is there any requirement that she,
15 in this case, act in the best interests of the
16 beneficiaries in, for example, negotiating a settlement?

17 MR. PHILIP DAVIS: I think that that's part of
18 her fiduciary duty. I think that she would not -- well,
19 let me try it this way. The personal representative
20 ultimately is the real party in interest who consents to
21 the settlement; and in so doing, she has a fiduciary
22 obligation to the beneficiaries to ensure that her
23 consent to the settlement is based on reason.

24 THE COURT: Okay. And then you said that you
25 had used Ms. Adams before, so I assume she has some

1 professional capacity in which you would have used her
2 before. What is that? Is she an attorney?

3 MR. PHILIP DAVIS: Well, Your Honor, there is
4 no professional qualifications for a personal
5 representative, but I've worked with Ms. Adams in a
6 couple other wrongful death cases, and I know that she
7 has been a personal representative appointed in about a
8 dozen wrongful death cases. So she has what I would
9 call on-the-job experience, as well as having dealt with
10 a number of highly skilled and experienced plaintiffs'
11 lawyers in wrongful death cases that resulted in
12 recoveries of substantial sums.

13 THE COURT: Okay. Anything else you want to
14 say, Mr. Davis?

15 MR. PHILIP DAVIS: None, Your Honor. Thank
16 you.

17 THE COURT: All right. Mr. Chavez, do you
18 have anything that you would like to add to what
19 Mr. Davis has said?

20 MR. STEVEN CHAVEZ: Your Honor, just a little
21 -- a few seconds of history. The mother of the children
22 did consent to the personal representative to act as the
23 personal representative of this case, and so we went
24 through that with all the clients in this case. So
25 there was consent there from the child, from the mother,

1 and from Mr. Jamin Bailon.

2 That's all I would like to add, Your Honor.

3 THE COURT: Okay. And then, Ms. Martinez, why
4 don't you talk about the issues, the relevant issues
5 from your perspective. And if you want me to go over
6 those again, I'm happy to. If you remember what they
7 are, either restating them or -- because you are very
8 experienced in this matter. Just please go ahead.

9 MS. JONLYN MARTINEZ: Okay. Thank you, Your
10 Honor.

11 First, I would like to thank the Davises and
12 all counsel for their professionalism, because this was
13 a difficult case. It involved a wrongful death and high
14 emotions on both sides, and they were excellent to work
15 with, so that made the resolution of this case much
16 easier, even though it was a very difficult case.

17 We went and attended a mediation with Judge
18 Malott in February of 2020, and we were unable to
19 resolve it at that time. But since that time, Mr. Davis
20 was very helpful in continuing settlement discussions,
21 and we continued settlement discussions up until we were
22 able to reach a settlement. So those discussions, as he
23 stated, those did continue for almost six months until
24 we were able to finally reach a resolution in this case.
25 So we did go back and forth for a long time, working on

1 a reasonable resolution of this case, and it did take
2 almost six months. And this case did have to go before
3 the Board of County Commissioners and executive session,
4 where there was high debate about whether the settlement
5 was appropriate. And ultimately, they approved the
6 settlement.

7 There were contested issues of fact and law,
8 as Mr. Davis stated. He did have his experts, I had my
9 own experts, so it was going to be a battle of experts
10 at trial, as well as my clients' testimony. So there
11 was absolutely disputes of fact. And as he stated, my
12 clients did contend that they were simply defending
13 themselves when they discharged their firearms in this
14 case.

15 So at the conclusion of discovery, I was going
16 to move for summary judgment. And the case was going to
17 be very expensive. The plaintiffs, I think, had five or
18 six experts, I had several experts, so there were going
19 to be many, many depositions that were going to be very
20 costly in this case.

21 And I think -- I agree with counsel. I'm not
22 sure what a jury would do with this case. You know, on
23 the one hand, there was the death of an individual which
24 is always horrible. But on the other hand, as Mr. Davis
25 mentioned, we did have -- I think we had 400 recordings

1 of the decedent talking about various aspects of his
2 activities from, you know, animal cruelty, pictures of
3 his children, just a wide array of behaviors that would
4 have reflected poorly on him and his care of his
5 children.

6 And so at the end of the day, I think that --
7 I do believe, Your Honor, the settlement was fair and
8 reasonable. I think Mr. Davis and Mr. Chavez negotiated
9 and obtained a fair settlement on behalf of their
10 clients, and I do believe it's fair and reasonable under
11 the circumstances, Your Honor.

12 THE COURT: Okay. I think at this point maybe
13 I'll ask you, Ms. Adams -- and I am going to place you
14 under oath, if you don't mind.

15 Please raise your right hand. Do you solemnly
16 swear that the testimony you are about to give is true
17 and correct to the best of your knowledge?

18 MS. ROMIE ADAMS: I do.

19 THE COURT: All right. So you heard
20 Mr. Davis -- and actually, could you please, while we
21 can see how your name is spelled, is it R-O-M-I-E Adams?

22 MS. ROMIE ADAMS: That's correct.

23 THE COURT: Okay. So could you just tell me
24 about your background a little bit, and how it is you
25 became personal representative of the wrongful death

1 estate in this case.

2 MS. ROMIE ADAMS: I'm retired. I've worked
3 with many agencies throughout the state. I have three
4 children and four grandchildren. I'm married. And I
5 started working with attorneys -- or actually, lawyers.
6 My husband's cousin was an attorney, so we started
7 working with him and have continued working as personal
8 representatives for different lawyers that, you know,
9 have asked us or have asked me to serve as a personal
10 representative in their cases.

11 THE COURT: Okay. And how many cases have you
12 been a personal representative in, about?

13 MS. ROMIE ADAMS: Oh, around -- right around
14 maybe 12 or so.

15 THE COURT: Okay. And is there any difference
16 in your relationship as a personal representative versus
17 you're also next friend to A.B.? And, again, that's a
18 role that I just am trying to understand, to see if it's
19 any different from being the personal representative.
20 Or how is your role different as next friend?

21 MS. ROMIE ADAMS: There's really not a
22 difference. I mean, when I serve as personal
23 representative, I serve to the capacity that I am asked
24 to serve it which is, you know, in the best interests of
25 the minor child or children.

1 THE COURT: Okay.

2 MS. ROMIE ADAMS: Of each individual case.

3 MR. PHILIP DAVIS: Your Honor, if I may?

4 THE COURT: Sure.

5 MR. PHILIP DAVIS: Ms. Adams is personal
6 representative of the estate because the estate has the
7 wrongful death claim. She's next friend of A.B. because
8 A.B., as a child, cannot bring her claim for loss of
9 consortium and needs somebody to do it for her, and
10 that's the next friend rule.

11 THE COURT: Okay. But I'm just wondering if
12 there's a possibility at all of like a conflict.

13 MR. PHILIP DAVIS: No, no conflict. I'm
14 sorry. I didn't mean to interrupt, Your Honor.

15 THE COURT: That's okay.

16 MR. PHILIP DAVIS: There is no conflict
17 because in this case in particular, the loss of
18 consortium claim that the children have is essentially
19 no different than their being beneficiaries of the
20 estate. And so the only recipients of either the estate
21 or the loss of consortium claims is the same two
22 children.

23 THE COURT: Okay. And then, Ms. Adam, I'm
24 going to ask you a few questions about the negotiations
25 in this case. When the settlement -- well, first, did

1 you participate in that first mediation with Judge
2 Malott?

3 MS. ROMIE ADAMS: Yes, I did.

4 THE COURT: Okay. And did also Jamin Bailon
5 participate, Ms. Adams?

6 MS. ROMIE ADAMS: Phil, did he participate?

7 MR. PHILIP DAVIS: I don't remember if the
8 younger Mr. Bailon was at the mediation. I think Steve
9 was there in his behalf.

10 THE COURT: Okay. So, Ms. Adams, during that
11 negotiation and in the negotiations that happened after
12 that, were you consulted before Mr. Davis would take an
13 offer to Ms. Martinez?

14 MS. ROMIE ADAMS: Mr. Davis was really good
15 in informing me and keeping me up-to-date on all
16 negotiations throughout the case.

17 THE COURT: Did you approve the ultimate
18 demand of \$125,000?

19 MS. ROMIE ADAMS: After speaking with
20 Mr. Davis, we all decided that it was in the best
21 interests of the minor child to agree on the settlement.

22 THE COURT: Okay. And when you say "we all,"
23 who all was involved in that decision?

24 MS. ROMIE ADAMS: Well, Mr. Davis, Mr. Chavez,
25 and myself. And I know he spoke with the family of Mr.

1 Bailon.

2 THE COURT: I'm sorry. I missed that.

3 MS. ROMIE ADAMS: The family. Mr. Davis was
4 in contact with the family of Mr. Bailon.

5 THE COURT: Okay. And maybe I'll get back to
6 that at the end. All right. How familiar -- are you
7 familiar with A.B.'s circumstances right now?

8 MS. ROMIE ADAMS: Yes, I am.

9 THE COURT: Okay. And how did you become
10 familiar with her circumstances? Have you met her?

11 MS. ROMIE ADAMS: I haven't met her in person,
12 but I have spoken to her over the phone.

13 THE COURT: About how many times?

14 MS. ROMIE ADAMS: I've only spoken to her
15 once.

16 THE COURT: And you know Mr. Davis said that
17 she's 17. When will she be 18?

18 MS. ROMIE ADAMS: In six months. She will
19 turn 18 in February.

20 THE COURT: Did you talk to her about the
21 settlement before you agreed to the settlement? Or no?

22 MS. ROMIE ADAMS: No.

23 THE COURT: Okay. As far as you know, is
24 there any -- is it any problem with her, once she turns
25 18, sort of living on her own? Does she have any

1 disabilities or any issues like that, that would make it
2 difficult for her to live on her own?

3 MS. ROMIE ADAMS: I don't think so.

4 THE COURT: Okay. And given your role in the
5 case and your knowledge of the case, do you agree that
6 there were serious questions of law and fact which could
7 place the outcome of the litigation in doubt?

8 MS. ROMIE ADAMS: Yes.

9 THE COURT: Do you also believe that the value
10 of an immediate recovery outweighs the possibility of
11 future relief after protracted and expensive litigation?

12 MS. ROMIE ADAMS: Yes.

13 THE COURT: Now, you heard Mr. Davis talk
14 about how the fees and I guess your own fees were
15 basically being -- how you were agreeing to take the
16 settlement funds and divide it among everybody. Do you
17 believe that those fees are -- well, first, let me start
18 with the attorneys' fees. They're each getting the same
19 amount that each minor child is getting -- or I'm sorry
20 -- the amount that A.B. is getting, and then also the
21 other child who is not a minor child.

22 MS. ROMIE ADAMS: Yes.

23 THE COURT: You heard that discussion?

24 MS. ROMIE ADAMS: Yes.

25 THE COURT: Do you believe that that is a fair

1 fee arrangement, given the circumstances?

2 MS. ROMIE ADAMS: Yes, I do.

3 THE COURT: And why?

4 MS. ROMIE ADAMS: Because of the amount of the
5 settlement and because of the cost.

6 THE COURT: I'm sorry, Ms. Adams. We're
7 having a little bit of trouble, and I'm wondering if
8 maybe sometimes it's easier if you turn off your video,
9 then the audio comes through a little better. Do you
10 mind trying that, turning off your video and then
11 talking again?

12 MS. ROMIE ADAMS: Okay. Is that better?

13 THE COURT: So far.

14 MS. ROMIE ADAMS: Okay.

15 THE COURT: So go ahead and tell me why you
16 think that fee is fair and reasonable.

17 MS. ROMIE ADAMS: Like I mentioned earlier, I
18 think it's fair due to the facts and the circumstances
19 of the case and the amount of the settlement. So I
20 think it's fair on the amounts that everybody had to
21 split after the experts were paid.

22 THE COURT: Okay. And it sounds like you're
23 being paid out of the costs? Is that correct?

24 MS. ROMIE ADAMS: That is correct, uh-huh.

25 THE COURT: Okay. And that's only a portion,

1 I take it, of the -- was it about \$50,000 that was being
2 devoted to costs?

3 MS. ROMIE ADAMS: That's correct.

4 THE COURT: Okay. And you're getting a
5 portion of that \$50,000?

6 MS. ROMIE ADAMS: Yes. I'm getting \$2500 out
7 of that, as personal representative.

8 THE COURT: Okay. Do you have any sense --
9 well, actually, never mind. Forget that question.

10 Do you have any questions, Ms. Martinez, for
11 Ms. Adams?

12 MS. JONLYN MARTINEZ: Yes, Your Honor. I had
13 muted myself to try to make it quiet.

14 THE COURT: Okay.

15 MS. JONLYN MARTINEZ: Ms. Adams, are you
16 comfortable that the settlement proceeds, the payment of
17 the settlement proceeds, is in the best interests of
18 A.B.?

19 MS. ROMIE ADAMS: Yes, I am.

20 MS. JONLYN MARTINEZ: Okay. And you
21 understand that to the extent the settlement proceeds
22 are mismanaged by A.B. or they are lost by A.B., she
23 can't bring any additional claims against the defendants
24 in this case, correct?

25 MS. ROMIE ADAMS: That is correct.

1 MS. JONLYN MARTINEZ: Okay. And you
2 understand that you are releasing any and all claims
3 that may have been brought on behalf of A.B. in this
4 matter?

5 MS. ROMIE ADAMS: Yes.

6 MS. JONLYN MARTINEZ: Or the estate of
7 Mr. Bailon, correct?

8 MS. ROMIE ADAMS: That is correct.

9 MS. JONLYN MARTINEZ: You understand that
10 you're waiving the right to a jury trial?

11 MS. ROMIE ADAMS: That is correct.

12 MS. JONLYN MARTINEZ: You understand that the
13 defendants are not admitting any liability in this case?

14 MS. ROMIE ADAMS: That is correct.

15 MS. JONLYN MARTINEZ: You understand that from
16 the settlement proceeds, all costs, fees and expenses
17 must be paid, including any medical expenses related to
18 this claim?

19 MS. ROMIE ADAMS: That is correct.

20 MS. JONLYN MARTINEZ: And have you had an
21 opportunity to review the release in this case?

22 MS. ROMIE ADAMS: No, I haven't.

23 MS. JONLYN MARTINEZ: Okay. And do you agree
24 that if any other claims are filed against the
25 defendants by anyone related to the estate, that the

1 estate will indemnify the defendants for any claims that
2 were settled in these proceedings?

3 MS. ROMIE ADAMS: I'm not understanding that
4 question. Phil, can you help me out with that one?

5 MR. PHILIP DAVIS: Yes, Your Honor. We are
6 waiting to send the release to Ms. Adams until
7 Mr. Bailon has signed off on it, so she hasn't seen it.
8 But Ms. Martinez's question is an accurate question, and
9 the answer is properly "Yes," that the estate has agreed
10 to indemnification as a condition of the settlement
11 release.

12 MS. JONLYN MARTINEZ: Thank you, Mr. Davis.

13 Ms. Adams, you understand that other than the
14 payment of the settlement proceeds, there has been no
15 other inducement or representations relied on by you
16 that were made by the defendants or anyone else, other
17 than the payment of the settlement proceeds, correct?

18 MS. ROMIE ADAMS: That is correct.

19 MS. JONLYN MARTINEZ: And you are entering
20 into the settlement voluntarily?

21 MS. ROMIE ADAMS: Yes, I am.

22 MS. JONLYN MARTINEZ: And you understand that
23 if the Court enters an order approving the settlement,
24 that A.B.'s claims and the estate's claims will be
25 extinguished forever?

1 MS. ROMIE ADAMS: I understand that.

2 MS. JONLYN MARTINEZ: And that A.B. can't
3 change her mind, and that you can't?

4 MS. ROMIE ADAMS: I'm sorry?

5 MS. JONLYN MARTINEZ: I'm sorry. A.B. can't
6 change her mind, and you can't change your mind about
7 agreeing to the settlement?

8 MS. ROMIE ADAMS: That is correct. I agree.

9 MS. JONLYN MARTINEZ: And do you believe that
10 under the circumstances, the settlement is fair,
11 reasonable, and in the best interest of the estate and
12 A.B.?

13 MS. ROMIE ADAMS: I agree that it is fair and
14 reasonable on behalf of the minor child.

15 MS. JONLYN MARTINEZ: And are you the personal
16 representative in addition to the rest of the estate of
17 Mr. Bailon?

18 MS. ROMIE ADAMS: Yes.

19 MS. JONLYN MARTINEZ: Okay. And you agree
20 that it is fair and reasonable with regard to the entire
21 estate, correct?

22 MS. ROMIE ADAMS: Correct.

23 MS. JONLYN MARTINEZ: Okay. Those are all my
24 questions, Your Honor. Thank you.

25 THE COURT: Okay. I have a couple more

1 questions, Ms. Adams. I just wanted to make sure that
2 you understood. Did you understand that you are not
3 required to settle this case, and you could take it to
4 trial if you wanted to?

5 MS. ROMIE ADAMS: I understand that.

6 THE COURT: And you understand that if you
7 went to trial, that it's possible that the outcome could
8 have been different than what the settlement is? In
9 other words, the estate, it's possible, could have
10 gotten more or less than what you're settling for? Did
11 you understand that?

12 MS. ROMIE ADAMS: I understood that, yes.

13 THE COURT: Did anybody threaten you or force
14 you in any way to get you to settle these claims?

15 MS. ROMIE ADAMS: No, Your Honor.

16 THE COURT: Are you confident that you
17 understand the terms of the settlement in this case?

18 MS. ROMIE ADAMS: I understand the terms of
19 this settlement.

20 THE COURT: Okay. So given those additional
21 questions that I had, Ms. Martinez, do you have anything
22 further?

23 MS. JONLYN MARTINEZ: No, Your Honor, I do
24 not. Thank you.

25 THE COURT: Mr. Davis, do you have anything,

1 any further questions?

2 MR. PHILIP DAVIS: No, Your Honor.

3 THE COURT: I'm sorry?

4 MR. PHILIP DAVIS: No, Your Honor.

5 THE COURT: Okay. And Mr. Chavez, do you have
6 any questions for Ms. Adams?

7 MR. STEVEN CHAVEZ: No, Your Honor. Thank
8 you.

9 THE COURT: There was one question I did want
10 to ask you, Mr. Davis. Based on the information that we
11 received from Ms. Adams, she said that you had been in
12 touch with the family, as well, and I'm just wondering
13 if you could tell me what their view was of the
14 settlement, since they're not here to speak for
15 themselves? I just would like to get an understanding
16 of, I believe, the mother. You may have consulted with
17 the mother. I don't know if you consulted with A.B., as
18 well. But if you could just give me their view.

19 MR. PHILIP DAVIS: Yes, Your Honor. Ms. Adams
20 actually misstated it. It was Mr. Chavez who has had
21 the primary contact with the family, so I would ask that
22 he respond to your question.

23 THE COURT: Okay. Mr. Chavez?

24 MR. STEVEN CHAVEZ: Thank you, Your Honor.
25 Yes, Your Honor, I've been in very close contact with

1 this family. They live in the same county that I live
2 in. I've met with them in person in my office at least
3 six times throughout this litigation, and I've talked
4 with them on the phone at least once a month, sometimes
5 more often. During settlement negotiations, I was
6 talking to them very often, probably at least a dozen
7 times during all the negotiations.

8 There has been -- as Ms. Martinez stated and
9 Mr. Davis stated, we've had ongoing negotiations for
10 quite some time, and so that forced us to certainly
11 speak with the mother and Mr. Bailon, Jamin Bailon. He
12 is 21 years old. He works full-time and he works a lot.
13 So we asked him if he wanted to be part of this hearing.
14 We asked Ms. Martinez if it was necessary that he be at
15 this hearing. And Mr. Bailon couldn't make it to this
16 hearing, and Ms. Martinez said it wasn't necessary.

17 But, yes, I did speak with them as recently as
18 yesterday regarding today's hearing. Actually, I spoke
19 with the mother, Naomi, this morning regarding the
20 hearing and regarding the release. So Mr. Bailon has
21 reviewed the release. They intend to drop it off to me
22 in the next day or two, to my office. And so they have
23 approved it and they do consent with the settlement.

24 You know, what is interesting is when I spoke
25 to A.B. -- I was speaking with A.B. and with Ms. Adams

1 this weekend, and one of the things she said is she
2 agreed with the settlement, but that nothing -- no
3 amount of money will ever bring back her father, so she
4 really wasn't interested in the money in the first
5 place; she was interested in what she believed was
6 justice for the case. And then the elderly or the older
7 Bailon, he was certainly consenting to the settlement,
8 as well.

9 Thank you. Hopefully that answers your
10 question.

11 THE COURT: Yes. And since you do have the
12 relationship, maybe you could make sure, is there any --
13 well, my understanding, and this actually comes from the
14 earlier conference that we had, and it wasn't on the
15 record, so we might as well put it on the record. My
16 understanding is that there's a small amount of money
17 that you intend to use from this settlement, or A.B.
18 intends to use from the settlement, kind of right off
19 the bat to purchase a car so that she can continue her
20 education, but then the rest of the funds will be put in
21 some sort of CD.

22 Could you tell me the more precise
23 arrangements for that and when she would have access to
24 the CD?

25 MR. STEVEN CHAVEZ: Yes, Your Honor. So what

1 was agreed to is essentially, she's going to get \$7500
2 so she can purchase a used car to go to the Valencia
3 County UNM branch. She needs a car. She lives far away
4 from anything, actually. It's a very rural area of the
5 county. The rest of it will be placed in a three-year
6 CD in her name, and she'll access it after three years.
7 It will be in her name.

8 I'll set that up. I've done it before with
9 numerous clients when there's not a lot of money. And
10 if you'd like, I could have the personal representative
11 do that, but it's probably easier if I do that. But I
12 will provide the personal representative documentation
13 that it has been set up, so that we can verify that it
14 has been set up. And that's essentially it, Your Honor.
15 We tried to structure the money through Kelly Ramsdell.
16 The structure was not -- it didn't have a positive
17 outcome because it was such a small amount of money.
18 Interest rates are so low, and actually it would cost
19 more money, I believe, than it was worth putting it into
20 a structure. The payment value was literally like \$100,
21 \$150, after several years.

22 So, yes, we agreed on the CD. We would ask
23 the Court to approve that. And, again, I will provide
24 the personal representative a verification that it has
25 been done.

1 THE COURT: Okay. And then just also to
2 double-check, I want to make sure that there is no issue
3 with respect to any physical or mental disabilities with
4 the child?

5 MR. STEVEN CHAVEZ: No issues, Your Honor.
6 That's a very good question. There are no issues with
7 disability, incapacity at all, with the child, the
8 mother, or Mr. Jamin Bailon.

9 THE COURT: All right. And then I guess I
10 should also put on the record, because I want to just
11 make sure it's clear, that the parties have asked me to
12 conduct this fairness hearing without having a GAL, a
13 guardian ad litem, because of the small amount of the
14 settlement and nobody wanted to divert funds from the
15 children to go towards the settlement. So Mr. Davis,
16 Mr. Chavez, whoever wants to speak, I just want sort of
17 like confirmation, more to just put on the record why it
18 is that you've asked to do this without a GAL.

19 MR. PHILIP DAVIS: Your Honor, it's partly for
20 what you said, because it's more money, and Mr. Chavez's
21 solution made sense to all of us. And the other is that
22 because A.B. is 17, we're only a few months away from
23 the age of majority. It did not seem like a useful
24 expenditure of resources to hire a GAL, when we had an
25 experienced personal representative and experienced

1 counsel on both sides to be able to present the matter
2 to you.

3 THE COURT: All right. Ms. Martinez, do you
4 have anything you'd like to add to that?

5 MS. JONLYN MARTINEZ: No, Your Honor. I think
6 I felt comfortable simply because it was Mr. Davis and
7 Mr. Chavez. They are very experienced lawyers, and I
8 trust their judgment. And if they believe it's fair and
9 reasonable, I think that their judgment speaks for
10 itself.

11 THE COURT: All right. Mr. Chavez, anything
12 further that you would like to add?

13 MR. STEVEN CHAVEZ: No, Your Honor. Thank
14 you.

15 THE COURT: All right. Well, it is my intent
16 at this point, I will find that the settlement is fair
17 and reasonable and in the best interests of the minor
18 child, A.B. I will approve the settlement. I will also
19 prepare an order that I would expect to have out by next
20 week. I'd like to say by the middle of next week, maybe
21 by the end of next week, but it will be next week. So
22 we'll just do our very best to get it out by next week,
23 assuming no other thing comes up.

24 Does that work for everybody's schedule? Do
25 you have any problem with that, Mr. Chavez or Mr. Davis?

1 MR. PHILIP DAVIS: No, Your Honor.

2 MR. STEVEN CHAVEZ: No, Your Honor.

3 THE COURT: Ms. Martinez, is that all right
4 with you?

5 MS. JONLYN MARTINEZ: Yes. Thank you, Your
6 Honor.

7 THE COURT: All right. Anything else that
8 anybody would like to say with regard to this fairness
9 hearing? And, again, I just want to make sure everybody
10 gets on the record anything they want on the record.

11 Mr. Davis, anything further?

12 MR. PHILIP DAVIS: Nothing further, Your
13 Honor.

14 THE COURT: Mr. Chavez?

15 MR. STEVEN CHAVEZ: Only just to thank you,
16 Your Honor, for letting us have this hearing so quickly.
17 Thank you. Nothing else.

18 THE COURT: And Ms. Martinez, anything?

19 MS. JONLYN MARTINEZ: No. Thank you very
20 much, Your Honor.

21 THE COURT: All right. Well, thank you all
22 very much for participating in this hearing. We'll get
23 our order done as quickly as possible. And I appreciate
24 your attendance. Thanks very much.

25 MS. JONLYN MARTINEZ: Thank you.

1 MS. RONNIE ADAMS: Thank you.

2 THE COURT: 'Bye 'bye.

3 MR. PHILIP DAVIS: Goodbye.

4 (Proceedings concluded at 2:47 p.m.)

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12 above-entitled matter and that the transcript page
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14 Judicial Conference of the United States.

15 Dated this 4th day of September, 2020.

16
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